

ORIGINAL

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Craig W. Christensen (ISB #2086)  
**CRAIG W. CHRISTENSEN, CHARTERED**  
414 South Garfield  
P.O. Box 130  
Pocatello, Idaho 83204-0130  
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Attorney For: Ireland Bank

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO


In the Matter of	)	Bankruptcy No. 03-41775
	)	
JOHN L. MERZLOCK,	)	PROOF OF CLAIM
	)	
Debtor.	)	
_____	)	

1. The undersigned, who practices law at 414 South Garfield, Pocatello, Idaho, 83204, is the agent of Ireland Bank, 161 Jefferson, P.O. Box 6039, Pocatello, Idaho, 83205, and makes this Proof of Claim on behalf of the Claimant.

2. The entity known as Landmark Building Partnership, an Idaho partnership, comprised of individuals appearing as general partners therein, was as of August 28, 2003 indebted to Claimant on Loan No. 2913000026 in the sum of \$33,767.62, comprised of an unpaid principal balance of \$33,552.52 and accrued interest of \$215.10.

3. The consideration for Loan No. 2913000026 is that on or about June 20, 1994, Landmark Building Partnership, by its partners, Howard E. Gibson, T.J. Merzlock, and W. James Johnston executed and

PROOF OF CLAIM



delivered to Ireland Bank its Universal Note in the face amount of \$200,000.00 plus interest thereon at the rate of 9.750% per annum payable on demand, but if no demand, then in one-hundred twenty (120) monthly installments of \$2,878.34 beginning on the 1st day of August, 1994, and on the 1st day of each month thereafter, until July 1, 2004, when the entire unpaid principal balance shall be paid in full.

4. Copies of the writings upon which this claim is founded are attached hereto.

5. No judgment has been rendered upon the claim.

6. The amount of all payments on this claim has been credited and deducted for the purpose of making this Proof of Claim.

7. This claim is not subject to any setoff or counterclaim.

8. No security interest is held for this claim except Deed of Trust dated June 20, 1994 executed by Landmark Building Partnership, recorded on June 20, 1994 under Instrument No. 94011348 in Book 617 of the official records of the County Recorder of Bannock County, Idaho. Claimant also claims the right to pursue the general partners of the partnership, including Debtor, John L. Merzlock, in the event the collateral is not sufficient to pay the underlying indebtedness in full.

9. This claim is a general, unsecured claim except to the extent that the security, if any, described in paragraph 8 is sufficient to satisfy the claim.

10. This claim is filed as a secured claim.

DATED This 25<sup>th</sup> day of September, 2003.

CRAIG W. CHRISTENSEN, CHARTERED

By 

Attorney for Ireland Bank

THE LANDMARK BUILDING  
PARTNERSHIP  
920 DEON DRIVE PO BOX 2559  
POCATELLO, ID 83206

IRELAND BANK LOAN CENTER  
161 JEFFERSON P.O. BOX 6039  
POCATELLO, ID 83205-6039

ACCOUNT #: 82-0450999  
Loan Number 2913000026  
Date JUNE 20, 1994  
Maturity Date JULY 1, 2004  
Loan Amount \$ 220,000.00  
Renewal Of NEW MONEY  
: 232-8213

**BORROWER'S NAME AND ADDRESS**

"I" includes each borrower above, joint and severally.

**LENDER'S NAME AND ADDRESS**

"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of TWO HUNDRED TWENTY THOUSAND AND NO/100 \* \* \* \* \* Dollars \$ 220,000.00

☒ **Single Advance:** I will receive all of this principal sum on JUNE 20, 1994. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On \_\_\_\_\_ I will receive the amount of \$ \_\_\_\_\_ and future principal advances are contemplated.

Conditions: The conditions for future advances are \_\_\_\_\_

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on \_\_\_\_\_

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

**INTEREST:** I agree to pay interest on the outstanding principal balance from JUNE 20, 1994 at the rate of 9.750 % per year until JULY 1, 2004

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be \_\_\_\_\_ the following index rate: \_\_\_\_\_

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as \_\_\_\_\_  
A change in the interest rate will take effect \_\_\_\_\_

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than \_\_\_\_\_ % or less than \_\_\_\_\_ %.

**Effect of Variable Rate:** A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

**ACCRUAL METHOD:** Interest will be calculated on a ACTUAL/365 basis.

**POST MATURITY RATE:** I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to \_\_\_\_\_

☐ **LATE CHARGE:** If a payment is made more than \_\_\_\_\_ days after it is due, I agree to pay a late charge of \_\_\_\_\_

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

**PAYMENTS:** I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest WITH PRINCIPAL

☒ **Principal:** I agree to pay the principal ON DEMAND, BUT IF NO DEMAND IS MADE;

☒ **Installments:** I agree to pay this note in 120 payments. The first payment will be in the amount of \$ 2,878.34 and will be due AUGUST 1, 1994. A payment of \$ 2,878.34 will be due EACH MONTH

unpaid balance of principal and interest will be due JULY 1, 2004 thereafter. The final payment of the entire

**ADDITIONAL TERMS:**

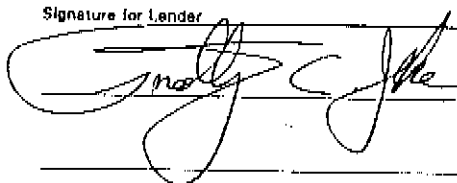
SEE DEED OF TRUST DATED OF EVEN DATE AND ADDENDUM FOR PREPAYMENT PENALTY

**COPY**

**PURPOSE:** The purpose of this loan is BUSINESS:  
REFINANCE COMMERCIAL BUILDING

**SIGNATURES:** I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender



THE LANDMARK BUILDING PARTNERSHIP

BY: Howard E. Gibson  
HOWARD E. GIBSON T.J. MERZLOCK, PARTNERS

BY: W. James Johnston  
W. JAMES JOHNSTON, PARTNER

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45668TA  
DEED OF TRUST  
AND ASSIGNMENT OF RENTS

94011348

4-1

THIS DEED OF TRUST (the "Security Instrument") is made this 20th day of June, 1994, between The Landmark Building Partnership, a general partnership (herein "Grantor") whose address is 920 Deon Drive, P.O. Box 2559, Pocatello, Idaho 83206 and Pioneer Title Company of Bannock County (herein "Trustee") whose address is 161 Jefferson P.O. Box 6039, Pocatello, Idaho 83205. Grantor, in consideration of the indebtedness herein recited and the trust herein created irrevocably grants and conveys to Trustee, in trust, with power of sale, the real property, commonly known as 920 Deon Drive, Pocatello, Idaho 83206 located in the County of Bannock State of Idaho, and particularly described as follows, and containing not more than twenty acres:

See Exhibit A attached

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights of way, appurtenances, fixtures now or hereafter attached to the property, all of which including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust and all rents issued and profits thereof; all of the foregoing, are herein referred to as the "Property";

TO SECURE to Beneficiary the repayment of the indebtedness evidenced by Grantor's Note of even date (herein "Note"), in the principal sum of Two hundred twenty thousand and no/100 (\$220,000.00) with interest thereon, and the final payment, if not sooner paid, due and payable on July 1, 2004

(a) Payment of any and all extensions or renewals, and successive extensions or renewals of the Note or of the indebtedness represented by the same, and of any other indebtedness at any time secured by this Security Instrument, whether represented by notes, drafts, open account or otherwise, and all the interest on all of the same, all of which extensions or renewals shall be optional with the Beneficiary, but at the Beneficiary's option may be made by new Notes or otherwise, and at, before, or after maturity, and for all of which this Security Instrument shall stand as a continuing security until paid; and (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Security Instrument and the performance of the covenants and agreements of Grantor herein contained.

UNIFORM COVENANTS. Grantor and Beneficiary covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Grantor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and late charges as provided in the Note.

2. PAYMENT OF TAXES AND INSURANCE. In the event Grantor fails to pay any installment of taxes or hazard insurance for 30 days after the same becomes due, upon written request of Beneficiary, Grantor shall pay to Beneficiary in addition to the monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum equal to one-twelfth (1/12) of the yearly taxes and assessments which may attain priority over this Security Instrument, plus one-twelfth (1/12) of yearly premium installments for hazard insurance, ("Funds" herein) all as reasonably estimated initially and from time to time by Beneficiary on the basis of prior taxes and assessments and insurance statements or the reasonable estimates thereof.

Beneficiary shall not be required to pay Grantor any interest or earnings on the Funds. Beneficiary shall give to Grantor, without charge, an annual accounting showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Beneficiary, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, and insurance premiums shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Grantor's option, either promptly repaid to Grantor or credited to Grantor on monthly installments of Funds. If the amount of the Funds held by Beneficiary shall not be sufficient to pay taxes, assessments, and insurance premiums as they fall due, Grantor shall pay to Beneficiary any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Beneficiary to Grantor requesting payment thereof.

Upon payment in full of all sums secured by this Security Instrument, Beneficiary shall promptly refund to Grantor any Funds held by Beneficiary.

3. APPLICATION OF PAYMENTS. All payments received by Beneficiary under paragraphs 1 and 2 hereof shall be applied by Beneficiary first in payment of amounts payable to Beneficiary by Grantor under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note.

4. HAZARD INSURANCE. Grantor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and hazards included within the term "extended coverage" in the amount satisfactory to Beneficiary with loss payable to Grantor and Beneficiary according to their respective interest at the time of loss. Proof of such coverage is in effect shall be furnished Beneficiary by Grantor at all times during the term of this Security Instrument. The amount collected under any fire or other insurance policy may be applied to Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. PRESERVATION AND MAINTENANCE OF PROPERTY. Grantor shall not remove or demolish any improvement thereon and shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.

6. LIENS AGAINST PROPERTY. Grantor shall pay, at least ten days before delinquency all taxes and assessments affecting said property, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof, which appear to be prior or superior hereto in addition to the payments due in accordance with the terms of the Note hereby secured.

7. ENVIRONMENTAL MATTERS. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Grantor's ownership, possession or control of the Property. Grantor agrees to provide written notice of Beneficiary immediately upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Security Instrument, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as a hazardous, toxic or radioactive waste material or substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

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If Beneficiary exercises the option to require immediate payment in full, Beneficiary shall give Grantor notice of acceleration. The Notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Grantor must pay all sums secured by this Security instrument. If Grantor fails to pay these sums prior to the expiration of this period Beneficiary may invoke any remedies permitted by this Security Instrument without further notice or demand on Grantor.

19. FORBEARANCE BY BENEFICIARY NOT A WAIVER. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes of other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

20. RECONVEYANCE. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Security instrument and the Note to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

21. SUBROGATION. To the extent that proceeds of the Note are used to pay for the purchase of all or any portion of the Property or any outstanding lien, charge or prior encumbrance against the Property, such proceeds have been or will be advanced by Beneficiary at Grantor's request and Beneficiary shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges, prior encumbrances and interest in and to the Property irrespective of whether said liens, charges or encumbrances are released or said interest is terminated.

22. FIXTURE FILING. This Security instrument is intended to be a Security Agreement covering fixtures and with respect to any fixtures within the definition of the Property and with respect to any personal property shall become fixtures, this Security Agreement shall also constitute a financing statement under the Uniform Commercial Code of Idaho. It is intended as to such fixtures and proceeds thereof, this Security instrument shall be effective as a financing statement filed as a fixture filing in the real estate records where the Property is situated.

23. NOTICE NOT REQUIRED TO BE GIVEN. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

24. SUBSTITUTE TRUSTEE. Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor Trustee for any Trustee appointed hereunder. When such substitution has been recorded in the County Recorders Office where the Property is situated, it shall be conclusive evidence of the appointment of such Trustee. Without conveyance of the property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

25. RIDERS TO THIS SECURITY INSTRUMENT. If one or more riders are executed by Grantor and recorded together with this Security instrument, the covenants and agreement of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument the same as if the rider(s) were a part of this Security Instrument.

26. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Grantor. All covenants and agreements of Grantor shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions thereof.

IN WITNESS WHEREOF, this instrument has been executed by Grantor the day and year first above written.

THE LANDMARK BUILDING PARTNERSHIP

BY: Howard E. Gibson  
HOWARD E. GIBSON, PARTNER

BY:

T. J. Merzlock  
T. J. MERZLOCK, PARTNER

W. James Johnston  
W. JAMES JOHNSTON, PARTNER

STATE OF IDAHO, COUNTY OF

On this 20th day of June, 1994.

before me, the undersigned, personally appeared Howard E. Gibson and T. J. Merzlock

and W. James Johnston

known to me to be one of the partners of the partnership of

The Landmark Building Partnership

and who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same

in said partnership name.

NOTARY SEAL

Sharon M. Ayre Notary Public  
Residing at Chubbuck, Idaho  
Comm. Expires 2-27-95

94011348

NO. 94011348  
RECORDED AT REQUEST OF

PIONEER TITLE

94 JUN 20 P 4:57

OFFICIAL RECORD BOOK NO. 607  
BANNOCK COUNTY IDAHO  
LARRY W. HAN (RECORDED)  
EE-12 DEPUTY

### REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

\_\_\_\_\_, Idaho, \_\_\_\_\_, 19\_\_\_\_  
, Trustee:

The undersigned is the legal owner of all indebtedness secured by the within Deed of Trust. All sums secured thereby have been fully paid. You are hereby requested and directed to cancel all evidences of indebtedness secured by said Deed of Trust and to reconvey, without warranty, the estate now held by you under the same.

Deliver to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE PROMISSORY NOTE OR NOTES, AND ANY EVIDENCES OF FURTHER AND/OR ADDITIONAL ADVANCES MUST BE PRESENTED WITH THIS REQUEST

4-4  
Exhibit A

94011348

A tract of land in Lots 4, 5, 6, 7 and 8 in Block 1 of CREEK ADDITION, a subdivision in SW1/4 SW1/4 of Section 13 and SE1/4 SE1/4 of Section 14, Township 6 South, Range 34 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the Intersection of Northeasterly right of way line of F.A.P. No. F-1032 (20) Highway and the Northwestern line of Lot 8 in Block 1 of Creek Addition, a subdivision in SW1/4 SW1/4 Section 13 and SE1/4 SE1/4 of Section 14, Township 6 South, Range 34 East, Boise Meridian; thence North 50°04' East on said Northwestern line of Lot 8 in Block 1 for a distance of 14.22 feet; thence South 39°56' East on the lot line between Lots 8 and 9 in Block 1 of said Creek Addition, 158.83 feet, more or less, to the Westerly line of Patsy Drive; thence Southwesterly on the Westerly line of Patsy Drive on a curve to the left with a radius of 185.17 feet for an arc distance of 105.0 feet; thence South 0°07' East on the Westerly line of Patsy Drive 20.0 feet, more or less, to the North line of Deon Drive; thence South 89°53' West on the North line of Deon Drive 147.00 feet, more or less, to the point of curvature; thence Northwesterly on the Northerly line of Deon Drive on a curve with a radius of 124.85 feet a central angle of 35°29' for an arc distance of 80.42 feet; thence North 54°08' West on the Northerly line of Deon Drive 12.01 feet, more or less, to an intersection of Northeasterly right of way line of F.A.P. No. F-1032 (20) Highway; thence North 35°38' East on the Northeasterly right of way line, 244.90 feet, more or less, to the point of beginning.



**ADDENDUM**

YOU MAY PREPAY YOUR LOAN AT ANY TIME. HOWEVER, IF THE RATE ON YOUR LOAN IS EQUAL TO, OR GREATER THAN, THE FEDERAL HOME LOAN BANK ADVANCE RATE ON THE DAY YOU ORIGINATE YOUR LOAN, THE PENALTY WOULD BE THAT RATE PLUS 300 BASIS POINTS ON THE PREPAYMENT DATE. YOU WILL BE CHARGED 100% OF THE PRESENT VALUE ON THE AMOUNT PREPAID OF THE INTEREST THAT WOULD BE CHARGED FOR THE REMAINING TERM. AT NO TIME WOULD THE PRESENT VALUE BE LESS THAN ZERO.

6-20-94

6-20-94

6-20-94

Howard E. Gibson

HOWARD E. GIBSON, PARTNER

T. J. Merzlock

T. J. MERZLOCK, PARTNER

Rev. James Johnston

W. JAMES JOHNSTON, PARTNER